

Wednesday, November 14, 2007

The Board met at its offices at 450 N Street, Sacramento, at 11:15 a.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

PUBLIC COMMENT

John W. Disterdick, made remarks regarding the Board of Equalization's treatment of his appeal.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Vidco Express, Inc., 378528

1997, \$252,281.84 Assessment

For Appellant:

Joseph P. Galasso, Jr., Attorney

For Franchise Tax Board:

Laurie J. McElhatton, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the gain on the sale of appellant's business should be characterized as business or nonbusiness income.

Whether appellant has shown that the standard apportionment formula did not fairly reflect appellant's activities in California and that the alternative formula that appellant proposed is reasonable.

Appellant's Exhibit: Miscellaneous Document (Exhibit 11.1)

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Bay Briar Shoppe, Inc., 405478 (ET)*; *Ngo My Chau, 415744*; and, *Ahmad Moussavi and Masoumeh Jafari, 417473*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Eddie Abraham Sharaf and Hadeel Adnan Sharaf, 100144, 100148, 100175, 100210, 106961 (ET)

1-1-95 to 7-15-99, \$26,749.25 Tax, \$6,687.35 Fraud Penalty, \$2,674.98 Failure to File Penalty

6-12-97 to 3-31-99, \$6,079.15 Tax, \$607.91 Failure to File Penalty

1-1-99 to 1-1-99, \$133,087.44 Tax, \$33,271.86 Fraud Penalty, \$10,148.10 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

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Eugene D. Denison (Deceased), 353326 (KH)

10-1-02 to 3-31-05, \$8,431.79 Tax

Action: Redetermine as recommended by the Appeals Division.

Scott I. Hanson, 347272 (UT)

March 17, 2005, \$13,050.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Christopher D. Santangelo, 289746 (AS)

1-2-00 to 3-31-02, \$52,029.00 Tax, \$6,976.40 Penalties

Action: Redetermine as recommended by the Appeals Division.

John Bernard Dubeau, 310294 (KHO)

7-1-97 to 9-30-04, \$240,705.88 Tax, \$53,197.42 Penalties

Action: Redetermine as recommended by the Appeals Division.

Bay Briar Shoppe, Inc., 405478 (ET)

May 1, 2007, \$963.13 Approximate Value

Action: The Board deferred consideration of this matter.

Thuong Ngoc Nguyen, 417472 (ET)

June 5, 2007, \$247.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ngo My Chau, 415744 (ET)

May 3, 2007, \$1,987.20 Approximate Value

Action: The Board deferred consideration of this matter.

Beverages & More, Inc., 417078 (ET)

June 13, 2007, \$2,714.32 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Sarbjit Sandhu and Prabhjot K. Sandhu, 416632 (ET)

June 7, 2007, \$3,824.21 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ahmad Moussavi and Masoumeh Jafari, 417473 (ET)

May 31, 2007, \$1,275.46 Approximate Value

Action: The Board deferred consideration of this matter.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Louis E. Cook and Nancy L. Cook, 258746*; and, *David W. Penney, 341465*.

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With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *David Chang*, 377398, the Board made the following orders:

Jesus Alcala and Antonia Alcala, 378327

2003, \$384.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Peter Bence, 353715

1982, \$2,344.72 Assessment

Action: Modify the action with concession by the Franchise Tax Board.

Andrew G. Brown and Sharon E. Brown, 384286

2002, \$1,924.37 Assessment

Action: Sustain the action of the Franchise Tax Board.

David Chang, 377398

2003, \$2,091.00 Assessment

Action: Sustain the action of the Franchise Tax Board. Ms. Mandel not participating.

Jerry Chow, 349005

2003, \$7,032.00 Tax, \$1,758.00 Late Filing Penalty, \$1,758.00 Notice and Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Louis E. Cook and Nancy L. Cook, 258746

1994, \$732.00 Assessment

Action: The Board deferred consideration of this matter.

The Hollywood Canteen, LLC, 361405

2003, \$363.57 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Fred Kennedy, 346183

2000, \$1,537.00 Tax, \$384.25 Late Filing Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Sunni Leigh, 379623

2000, \$10,866.11 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Estate of Jacqueline Miles (Deceased) and Cheri M. Guenther (Transferee), 329215

2001, \$9,489.73 Tax, \$3,087.14 Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board.

David W. Penney, 341465

2003, \$372.00 Tax, \$100.00 Late Filing Penalty, \$93.00 Notice and Demand Penalty

Action: The Board deferred consideration of this matter.

Osvaldo Salazar, 373762

2005, \$960.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Earl R. Siddall and Victoria Hernandez Siddall, 382167

1998, \$934.00 Tax, \$227.36 Post-Amnesty Penalty

1999, \$2,119.00 Tax, \$401.83 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Sheral A. VanDyke, 377373

2004, \$488.00 Tax, \$122.00 Late Filing Penalty, \$122.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Cecil L. Young, 353099

2001, \$4,656.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Parvin Nili and Mohammad H. Nili, 349309

2000, \$7,799.00 Claim for Refund

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Shushanik Bagdasaryan, 390369

2006, \$192.50

Action: Sustain the action of the Franchise Tax Board.

Willie L. Butler, 387493

2006, \$327.50

Action: Sustain the action of the Franchise Tax Board.

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Souny Chanthaphaly, 377274

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Yun Chong, 382467

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Maria DeJesus Lopez, 383536

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Lucia Fiorani, 378247

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Virgie Jones, 367273

2006, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Jan S. Kennedy, 387816

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Stanley McLemore, 388660

2006, \$347.50

Action: Reverse the action of the Franchise Tax Board, with appellant to receive assistance in the total of \$42.29.

Jorge Diaz Quirino, 374375

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Yvonne Washington, 386728

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND, AND DENIALS OF RELIEF OF PENALTIES, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund, and Denials of Relief of Penalties, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

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Adac Laboratories, 261170 (GH)

10-1-98 to 3-31-02, \$3,399,428.42

Action: Approve the redetermination as recommended by staff.

Telcordia Technologies, Inc., 130646 (OHB)

7-1-95 to 6-30-98, \$24,584,535.01

Action: Approve the redetermination as recommended by staff.

Wellquest International, Inc., 309414 (OHB)

1-1-00 to 3-31-04, \$1,276,833.98

Action: Approve the redetermination as recommended by staff.

Adac Research & Manufacturing, Inc., 261339 (GH)

4-1-99 to 3-31-02, \$1,129,011.91

Action: Approve the redetermination as recommended by staff.

Barney's, Inc., 417454 (OHB)

4-1-07 to 4-30-07, \$53,100.00

Action: Approve the relief of penalty as recommended by staff.

K-Mart Corporation, 415991 (OHA)

1-29-06 to 2-25-06, \$62,794.39

Action: Approve the relief of interest as recommended by staff.

Nextel of California, Inc., 418263 (OHB)

1-1-07 to 3-31-07, \$76,750.20

Action: Approve the relief of penalty as recommended by staff.

ASC Profiles, Inc, 418261 (JHF)

1-1-07 to 3-31-07, \$73,468.10

Action: Approve the relief of penalty as recommended by staff.

Madison/Graham Color Graphics, Inc., 301641 (AA)

1-1-02 to 6-30-05, \$445,912.00

Action: Approve the denial of claim for refund as recommended by staff.

Arvato Services, Inc., 301289 (AR)

1-1-02 to 12-31-03, \$151,751.35

Action: Approve the denial of claim for refund as recommended by staff.

IBM Credit, LLC, 298316 (OHB)

1-1-03 to 9-30-05, \$2,470,000.00

Action: Approve the denial of claim for refund as recommended by staff.

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IBM Credit Corporation, 281360 (OHB)

7-1-99 to 12-31-02, \$1,975,000.00

Action: Approve the denial of claim for refund as recommended by staff.

K-Mart Corporation, 415993 (OHA)

10-30-05 to 1-28-06, \$131,080.31

Action: Approve the denial of relief of interest as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Pacific Life Insurance Company, 318222*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Allergan Sales, LLC, 391026*; the Board made the following orders:

Barnaby Montgomery, 405620 (AR)

1-1-98 to 12-31-00, \$139,862.67

Action: Approve the credit and cancellation as recommended by staff.

Pico Rivera Pallet Corporation, 416635 (EH)

7-1-06 to 8-15-06, \$65,576.14

Action: Approve the credit and cancellation as recommended by staff.

Texwood Industries, Inc., 347092 (OHA)

1-1-01 to 12-31-03, \$2,167,347.19

Action: Approve the credit and cancellation as recommended by staff.

Mark John Williams, 416973 (AS)

7-1-02 to 6-30-03, \$64,589.79

Action: Approve the credit and cancellation as recommended by staff.

Veronica Vasquez, 416671 (EA)

7-1-05 to 6-30-06, \$55,006.42

Action: Approve the credit and cancellation as recommended by staff.

SKG & R, Inc., 418284 (ARH)

10-1-05 to 3-31-06, \$56,252.15

Action: Approve the credit and cancellation as recommended by staff.

Lewis Vehicle Services, Inc., 417466 (FHB)

4-1-07 to 4-30-07, \$123,296.08

Action: Approve the credit and cancellation as recommended by staff.

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Amcor Sunclipse North America, 401437 (EA)

12-19-04 to 3-24-07, \$90,912.21

Action: Approve the refund as recommended by staff.

Patagonia, Inc., 394864 (AR)

10-1-05 to 3-31-06, \$101,880.58

Action: Approve the refund as recommended by staff.

Vons Employees Federal Credit Union, 262412 (AP)

1-1-01 to 12-31-05, \$82,085.76

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 339197 (EH)

10-1-03 to 6-30-06, \$2,081,423.07

Action: Approve the refund as recommended by staff.

Cypress Semiconductor Corporation, 386556 (GH)

4-1-06 to 6-30-06, \$87,658.27

Action: Approve the refund as recommended by staff.

Leiner Health Products, Inc., 216144 (AS)

10-1-00 to 3-31-02, \$386,640.84

Action: Approve the refund as recommended by staff.

J.R. Simplot Company, 415051 (OH)

4-1-01 to 12-31-02, \$101,734.18

Action: Approve the refund as recommended by staff.

Euromarket Designs, Inc., 402361 (OHA)

10-1-06 to 12-31-06, \$52,358.30

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 403067 (KH)

5-25-07 to 6-25-07, \$263,684.00

Action: Approve the refund as recommended by staff.

Pacific Life Insurance Company, 318222 (EAA)

4-1-02 to 9-30-05, \$950,406.90

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Harte-Hanks Data Technologies, LLC, 406632 (OHB)

10-1-06 to 12-31-06, \$57,089.60

Action: Approve the refund as recommended by staff.

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Convergent Prima, Inc., 416051 (OHB)

7-1-01 to 12-31-03, \$59,121.27

Action: Approve the refund as recommended by staff.

International Business Machines Corporation, 399474 (OHB)

1-1-99 to 9-30-05, \$1,651,934.64

Action: Approve the refund as recommended by staff.

Travis Credit Union, 404506 (JHF)

1-1-07 to 3-31-07, \$98,761.95

Action: Approve the refund as recommended by staff.

Flextronics International USA, Inc., 394876 (GH)

10-1-06 to 12-31-06, \$101,712.46

Action: Approve the refund as recommended by staff.

Boeing Satellite Systems, Inc., 315958 (AS)

10-1-00 to 12-31-04, \$2,741,021.66

Action: Approve the refund as recommended by staff.

Arcadia Financial, Ltd., 405773 (OHB)

7-1-05 to 12-31-06, \$1,188,409.97

Action: Approve the refund as recommended by staff.

Allergan Sales, LLC, 391026 (EAA)

1-1-05 to 12-31-05, \$128,443.67

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

The MacGregor Group, Inc., 354082 (OHB)

7-1-03 to 3-31-06, \$97,696.45

Action: Approve the refund as recommended by staff.

Legoland California, LLC, 416347 (FHB)

10-1-03 to 12-31-06, \$147,049.46

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *ExxonMobil Oil Corporation, 339663*; the Board made the following orders:

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Sampoerna Distribution Network, Inc., 151233 (ET)

7-1-99 to 9-30-99, \$310,537.80

Action: Approve the redetermination as recommended by staff.

ExxonMobil Oil Corporation, 339663 (MT)

8-1-99 to 12-31-01, \$9,576,849.24

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

USAA Life Insurance Company, 381439 (ET)

1-1-01 to 12-31-06, \$283,961.13

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

ExxonMobil Oil Corporation, 305833 (MT)

8-1-99 to 12-31-01, \$3,079,020.57

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAXES MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petitions for Reassessment of Unitary Value

Blythe Energy, LLC (1136), 417202

2007, \$244,700,000.00 Unitary Value

Action: Reduce the 2007 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Omnipoint Communications, Inc. (2748), 414761

2007, \$1,507,400,000.00 Unitary Value

Action: Reduce the 2007 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Petitions for Reassessment of Nonunitary Value

Mountain Utilities, LLC (185), 421264

2007, \$1,286,975.00 Nonunitary Value

Action: Reduce the 2007 nonunitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Union Pacific Railroad Company (843), 421265

2007, \$391,353,924.00 Nonunitary Value

Action: Reduce the 2007 nonunitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTER, ADJUDICATORY

Speaker: Suzanne Beaudelaire, Ernst and Young, made remarks on behalf of *UCI University Club, 290120*.

UCI University Club, 290120 (EAA)

4-1-01 to 3-31-04, \$10,882.53 Tax

Considered by the Board: February 27, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Kung-Ming Chiu, 332187

2002, \$2,518.00 Tax, \$439.14 Accuracy-Related Penalty

Considered by the Board: July 17, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board as recommended by staff.

Robert Dean Hines, 353727

1989, \$12,209.66 Interest Abatement

1990, \$2,524.52 Interest Abatement

Considered by the Board: July 17, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board as recommended by staff.

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Thomas W. Kulp and Suzanne G. Kulp, 335780

2002, \$2,335.00 Assessment

Considered by the Board: July 17, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board to allow a rental property loss for 2002 of \$8,927.00, as recommended by staff.

SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY

Allergan Sales, Inc., 357255 (EAA)

4-1-01 to 5-31-02, \$114,876.44

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, the Board approved the refund as recommended by staff.

Pictometry International Corporation, 402876 (OHB)

7-1-06 to 9-30-06, \$109,680.89

Considered by the Board: August 14, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Allergan Sales, LLC, 356791 (EAA)

4-1-04 to 12-31-05, \$82,774.32

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, the Board approved the refund as recommended by staff.

Allergan Sales, LLC, 357254 (EAA)

6-1-02 to 3-31-04, \$248,068.89

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, the Board approved the refund as recommended by staff.

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Long Beach Acceptance Corporation, 198737 (EA)

7-1-99 to 3-31-05, \$2,233,552.58

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

LEGAL APPEALS PROPERTY TAX MATTERS, ADJUDICATORY

Ms. Steel moved to refer the issue of emission reduction credits to the Property Taxes Committee. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Chu voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

San Diego Gas & Electric Company (141), 414848

2007, \$4,156,800,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Duke Energy Moss Landing (1103), 415122

2007, \$680,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Mountainview Power Company (1119), 414758

2007, \$603,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

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Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Elk Hills Power, LLC (1126), 414757

2007, \$275,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Steel. No other disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee and Ms. Chu voting yes, Mr. Leonard voting no, Ms. Steel not participating in accordance with Government Code section 15626, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Delta Energy Center, LLC (1128), 415120

2007, \$405,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Pastoria Energy Center, LLC (1131), 415660

2007, \$386,400,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Calpine Construction Finance Company, LP (1132), 415661

2007, \$212,900,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Wednesday, November 14, 2007

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Metcalf Energy Center (1133), 415662

2007, \$311,900,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

Southern California Gas Company (149), 414849

2007, \$3,018,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Verizon California, Inc. (201), 415121

2007, \$3,480,700,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

GWF Hanford, Inc. (1122), 415657

2007, \$66,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Wednesday, November 14, 2007

GWF Energy, LLC-Henrietta (1123), 415658

2007, \$67,400,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Tele globe USA, Inc. (7760), 414755

2007, \$947,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be granted as recommended by staff.

Telscope Communications (7907), 414762

2007, \$9,770,000.00 Unitary Value, \$977,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2007 unitary value be reduced to \$5,140,000.00 and the petition for abatement of penalty be denied as recommended by staff.

New Edge Network, Inc. (7800), 414756

2007, \$2,620,000.00 Unitary Value, \$262,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2007 unitary value be reduced to \$2,600,000.00 and the petition for abatement of penalty be denied as recommended by staff.

Duke Energy Morro Bay, LLC (1104), 373730

2005, \$1,699,901.00 Unitary Escaped Assessment

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Wednesday, November 14, 2007

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Los Esteros Critical Energy Facility, LLC (1143), 415659

2007, \$86,700,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

PacifiCorp (106)

2004, \$1,300,000.00 Escaped Assessment, \$120,000.00 Penalties, \$396,000.00 In-lieu Interest

2005, \$100,000.00 Excessive Assessment

2006, \$300,000.00 Excessive Assessment

2007, \$200,000.00 Escaped Assessment, \$10,000.00 Penalties, \$6,000.00 In-lieu Interest

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

NextG Networks of California, Inc. (7982)

2004, \$2,107,000.00 Escaped Assessment, \$210,700.00 Penalties, \$695,310.00 In-lieu Interest

2005, \$7,287,000.00 Escaped Assessment, \$728,700.00 Penalties, \$1,748,880.00 In-lieu Interest

2006, \$1,240,000.00 Escaped Assessment, \$124,000.00 Penalties, \$186,000.00 In-lieu Interest

2007, \$1,300,000.00 Escaped Assessment, \$130,000.00 Penalties, \$78,000.00 In-lieu Interest

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

Wednesday, November 14, 2007

Unitary Escaped Assessments

Ace Communications, Inc. (8069)

2007, \$9,100.00 Escaped Assessment, \$910.00 Penalty

Across the Globe Telecommunications, Inc. (8070)

2007, \$266,000.00 Escaped Assessment, \$26,600.00 Penalty

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment, plus penalties, as recommended by staff.

Board Roll Changes

2007 State-Assessed Property Rolls

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2007 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 11.2).

The Board recessed at 12:40 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

AADIJ Investment, Inc., 334276 (GH)

Action: The Board granted the petitioner's request for postponement.

J & H Jewelry Mart, Inc., 304042 (GH)

4-1-01 to 3-31-04, \$50,290.07 Tax, \$12,572.64 Fraud Penalty

For Petitioner: Herminio Bustos, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the Department's use of the mark-up method to determine additional taxable gross receipts results in an excessive measure of tax.

Whether the 25-percent penalty for fraud or intent to evade is supported by clear and convincing evidence.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, November 14, 2007

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD NOVEMBER 14, 2007**

Vidco Express, Inc., 378528

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

SALES AND USE TAX APPEALS HEARING

Curtis 1000, Inc., 213334 (OH)

4-1-97 to 6-30-00, \$54,123.00 Claim for Refund

For Claimant: Waived Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Department properly disallowed claimed sales for resale made to American Professional Institute for periods prior to March 10, 1998.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim be denied as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD NOVEMBER
14, 2007**

J & H Jewelry Mart, Inc., 304042 (GH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:15 p.m.

The foregoing minutes are adopted by the Board on February 1, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *John W. Disterdick*, 238348; *Swift Transportation Company, Inc.*, 266318; *7-Eleven, Inc.*, 333747 (FH); *Home Care Information Systems, Inc.*, 89002426820 (OH); and, *L and M, Inc.*, 283577, 330488, 343764 (CH).